

N.D.A.G. Letter to Koppang (June 7, 1988)

June 7, 1988

Mr. Alton N. Koppang
Director of Finance
Department of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Mr. Koppang:

Thank you for your letter of February 8, 1988, in which you request an opinion concerning the authority of the Board of Education of the city of Fargo (the Board) to issue general obligation bonds pursuant to N.D.C.C. ch. 21-03. I apologize for the delay in responding to your letter.

You request an opinion whether the Board may follow N.D.C.C. § 21-03-08(7) without having its building fund tax, levied pursuant to N.D.C.C. § 15-51-11 and 15-51-13, approved by the electors in the Fargo School District as is required by N.D.C.C. § 57-15-16 for a building fund tax levy established pursuant to that section. You also request an opinion whether N.D.C.C. § 15-51-13, standing alone, authorizes the Board to dedicate future mill levies so as to allow the Board to enter into long-term debt, either through the issuance of bonds or a commitment to long-term leases, without violating N.D. Const. art. X, § 16. However, you have since informed this office that you withdraw this second request and, therefore, I will not address that question.

In your letter you refer to N.D.C.C. § 21-03-08(7). However, it appears from the question asked that you are, in fact, referring to N.D.C.C. § 21-03-07(7) and this letter, therefore, will refer to that section.

N.D.C.C. § 21-03-04 authorizes municipalities to borrow money and issue general obligation bonds for the purposes and by the procedures provided in N.D.C.C. ch. 21-03. N.D.C.C. § 21-03-06(4) provides that bonds may be issued "[b]y any public school district, or the school district of the city of Fargo, to purchase, erect, enlarge, and improve school buildings and teacherages, to acquire sites therefor and for playgrounds, to furnish and equip the same with heat, light, and ventilation or other necessary apparatus." N.D.C.C. § 21-03-06(4).

N.D.C.C. § 21-03-07 provides, in pertinent part, as follows:

21-03-07. Election required -- Exceptions. No municipality, and no governing board thereof, shall issue bonds without being first authorized to do so by a vote equal to sixty percent of all the qualified voters of such municipality voting upon the question of such issue except:

. . .

7. he governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings. . . .

(Emphasis supplied.)

N.D.C.C. § 21-03-07(7), therefore, creates an exception to the general requirement for holding an election and receiving the approval of 60% of the qualified voters voting on the question prior to issuance of general obligation bonds. That exception provides that a school district may "dedicate the tax levies as authorized by section 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings."

In your letter you indicate that the Board has established a building fund tax levy of 15 mills pursuant to N.D.C.C. §§ 15-51-11 and 15-51-13. There is no requirement for an election approving a building fund tax levy established pursuant to these sections and you indicate in your letter that the Board has never conducted such an election.

It is my understanding from your letter that the Board has never established a building fund tax levy pursuant to N.D.C.C. 57-15-16, which requires an election and approval of 60% of the qualified voters voting on the question of establishing the levy. Your question, therefore, is whether the Board may issue general obligation bonds pursuant to N.D.C.C. § 21-03-07(7) despite the fact that its building fund tax has been levied pursuant to N.D.C.C. §§ 15-51-11 and 15-51-13 rather than N.D.C.C. § 57-15-16.

The exception set forth in N.D.C.C. § 21-03-07(7), by its very language, applies only to building fund tax levies established pursuant to N.D.C.C. § 57-15-16. There is no language in this subsection which would create an exception for the building fund tax levy established pursuant to N.D.C.C. § 15-51-11 and 15-51-13. It is a general rule of statutory construction that "[w]here there is an express exception, it comprises the only limitation on the operation of the statute and no other exceptions will be implied." 2A N. Singer, Sutherland Statutory Construction 47.11 (rev. 4th ed. 1984).

Therefore, it is my opinion that the Board may not issue general obligation bonds without an election, pursuant to N.D.C.C. § 21-03-07(7), unless the bonds are to be paid from a building fund tax levy established pursuant to N.D.C.C. 57-15-16 and the other requirements of N.D.C.C. § 21-03-07(7) are met.

I hope this opinion is helpful. Please contact me if you have any further questions on this matter.

Sincerely,

Nicholas J. Spaeth

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